Ammex Tax & Duty Free Shops, Inc. and United Food and Commercial Workers, District Union Local One, AFL-CIO

United Food and Commercial Workers, District Union Local One, AFL-CIO (Ammex Tax & Duty Free Shops, Inc.) and Michael St. Andrew. Cases 3-RC-10410 and 3-CB-7012

March 17, 1997

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On December 24, 1996, Administrative Law Judge William F. Jacobs issued the attached decision. The Employer filed exceptions and a supporting brief and the Union filed an answering brief.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Food and Commercial Workers, District Union Local One, AFL-CIO and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time sales employees, warehouse employees, traffic guards and perfume representatives employed by the Employer at its Champlain and Rouse's Point, New York locations, but excluding managerial, confidential and supervisory employees and guards as defined in the Act.

¹The Employer has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Standard Dry Wall Products, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge inadvertently failed to include the commerce findings. The complaint alleged, and the Respondent-Union admitted, that the Employer, a Delaware corporation with its principal office in Ridgefield, Connecticut, and retail sales facilities in Champlain and Rouse's Point, New York, engages in the retail sale of duty-free merchandise, and annually derives gross revenues in excess of \$500,000 and purchases and receives goods at its New York State facilities and materials valued in excess of \$50,000 directly from points located outside the State of New York.

Robert A. Ellison, Esq., for the General Counsel.
Roger Darius Meade, Esq. (Littler, Mendelson, Fastiff, Ticky & Mathiason), of Washington, D.C., for the Employer.
Gene Szuflita, Esq. (Leibowitz, Belson, Perlman & Szuflita), of New York, New York, for the Respondent Union.

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge. The petition in Case 3–RC–10410 was filed on April 15, 1996, by the United Food and Commercial Workers, District Union Local One, AFL–CIO (the Petitioner, the Union, or the Respondent). Pursuant to a Stipulated Election Agreement approved by the Acting Regional Director for Region 3 on May 8, a secret-ballot election was conducted on June 4 among the employees in the following described appropriate unit:

All full-time and regular part-time sales employees, warehouse employees, traffic guards and perfume representatives employed by the Employer at its Champlain and Rouses Point locations, but excluding managerial, confidential and supervisory employees and guards as defined in the Act.

A tally of ballots served upon the parties at the conclusion of the election disclosed that nine votes were cast for the Petitioner, eight votes were cast against the Petitioner, and no challenged ballots were cast. Thus, the result of the election is that a majority of valid votes counted was cast for the Petitioner.

On June 11, Ammex Tax & Duty Free Shops, Inc. (the Employer or the Company) timely filed an objection to conduct affecting the results of the election. The objection read in relevant part, as follows:

. . . during the critical period between the filing of the petition in this matter and the election conducted on June 4, 1996, agents of UFCW District Union Local One, Petitioner, threatened employees in the unit in question with a possible job loss and loss of other benefits in the event that during the critical period the employees opposed and/or continued to oppose UFCW District Union Local One or otherwise engaged in concerted activities which in fact were protected by Section 7 of the National Labor Relations Act, as amended.

The charge in Case 3–CB–7012 was filed on June 17 by Michael St. Andrew, an individual. The complaint issued on August 27 alleging that the Union, acting through its agent, Vincent Cavo, threatened an employee of the Employer prior to the election with possible job loss after the election, as a result of that employee's protected concerted activities in violation of Section 8(b)(1)(A).

On August 27, following the Region's investigation of the Employer's objection and issuance of complaint, the Regional Director issued an order directing hearing on objection, order consolidating cases and notice of hearing in which she determined that the issues raised by the objection were coextensive with those raised by the allegations contained in the complaint, that accordingly the cases should be consoli-

¹ Hereinafter, all dates are in 1996 unless otherwise noted.

tion, order consolidating cases and notice of hearing in which she determined that the issues raised by the objection were coextensive with those raised by the allegations contained in the complaint, that accordingly the cases should be consolidated for the purposes of hearing, ruling and decision by an administrative law judge and that thereafter Case 3–RC–10410 should be transferred to the Board in Washington, D.C.

These consolidated cases were tried before me on November 6 in Plattsburgh, New York.

All parties were represented at the hearing and were afforded full opportunity to be heard and present evidence and argument. The General Counsel, the Respondent, and the Employer filed briefs. Upon the entire record, my observation of the demeanor of the witnesses, and after giving due consideration to the briefs, I make the following

FINDINGS OF FACT

Jurisdiction and the status of the Union as a labor organization are admitted and are not in issue.

A. The Alleged Unfair Labor Practice

The Employer is a Delaware corporation with its principal office and place of business in Ridgefield, Connecticut, with retail sales facilities in Champlain and Rouses Point, New York, where it is engaged in the retail sale of duty-free merchandise.

Michael St. Andrew began working for the Employer about May 1995. He was employed at the Champlain location during all or part of the period of his employment. He was employed at different times either as a warehouseman or as a store clerk.

Between the end of February 1996 and the middle of April, the Union undertook an organizing campaign. St. Andrew supported the Union and participated in its organizational efforts. He attended at least three union meetings, two of them at the homes of fellow employees where he, along with the others, signed attendance sheets passed around at the start of proceedings. He also distributed and obtained the signatures of other employees on union authorization cards during the first part of the campaign.

Vincent Cavo, the union representative in charge of the campaign, testified to the involvement of St. Andrew during its early stages. He testified that St. Andrew had been principally responsible for getting the authorization cards signed.

At some point after the first two organizational meetings, which St. Andrews testified occurred in early and mid-April, he began to question the desirability of union representation. A number of factors contributed to St. Andrew's doubts and to his eventual change of heart. First of all, he testified, he called some of the Company's employees who were employed at its Buffalo/Niagara location. He asked them their opinion of the Union since they were already represented by it and were working under a collective-bargaining agreement negotiated by the Employer with the Union, Through these contacts, St. Andrew obtained the impression that not everything the union representatives were telling him and the other employees at the Champlain and Rouses Point locations was true. In particular, the benefit package being discussed by union representatives with the Champlain employees differed from the benefits being enjoyed by employees under the Buffalo contract, according to the information St. Andrew received from his Buffalo contacts.

A second factor which adversely affected St. Andrew's complete dedication to the organizational cause was a result of a series of employee meetings which management scheduled in order to present its position during the campaign. St. Andrew attended one or more of these meetings. After being advised by the Buffalo employees of the content of their collective-bargaining agreement, St. Andrew asked Phil Belcher, vice president of the Company, to get him a copy of the contract. Belcher complied with St. Andrew's request and brought a copy of it to one of the management/employee meetings. He invited any of the employees who wished to do so, to photocopy the Buffalo contract. St. Andrew made such a copy for his own use and subsequently analyzed the content of the Buffalo contract in light of what he had been told by the Union.

After attending the first two union meetings and one or more of the management/employee meetings, then comparing the Union's presentation of its position with that of management, then analyzing the Buffalo contract, St. Andrew began to advise certain other employees to check out what they were being told by the union representatives, to "listen to what was being said by the Company too, because not everything they were being told by the Union was true." St. Andrew testified that at this point in the campaign he was undecided about union representation and remained so until he attended his third organizational meeting.

Still a third factor may have played a part in planting doubts in St. Andrew's mind about choosing union representation. This concerned the fact that the Union had been attempting, somewhat earlier, to organize the Grand Union, where St. Andrew's wife was employed at the time. St. Andrew testified that when Cavo would call him to discuss the Ammex campaign, his wife would apparently sometimes answer the phone and then be subjected to the Union's position with regard to the Grand Union campaign which she "didn't want to hear." As a result of his wife's annoyance with Cavo, St. Andrew testified, he told Cavo not to call his house or contact him anymore. Cavo complied.

A fourth factor which may have had some affect in convincing St. Andrew to turn away from his prounion position was the termination of his mother-in-law by the Employer. The specific circumstances surrounding her termination do not appear in the record. But there are indications, not evidentiary, that she had been a supervisor, possibly involved in the union campaign and terminated during the campaign for reasons unspecified. Her termination later became the subject of discussion during the incident which gave rise to the sole allegation of violation of Section 8(b)(1)(a) in the instant case.

By the date of the third and fourth union organizational meetings, both held on the same day, Cavo was already aware that St. Andrew had turned against the Union because the other employees had all reported this as fact. Cavo testified that the other employees had reported to him that St. Andrew was telling them that he had tried to contact Cavo on numerous occasions in order to obtain answers to questions he had for him, that he had phoned Cavo and left messages but that Cavo would not return his calls. Since St. Andrew's charges against him were untrue, Cavo testified, he concluded that St. Andrew had turned against the Union.

The third and fourth union organizational meetings were scheduled for and took place on May 72 at 9 a.m. and 7 p.m. St. Andrew testified that he heard about the meetings from another employee and decided to attend because he wanted to get answers as to why there were so many differences between what was contained in the Union's contract with the Employer covering the Buffalo/Niagara unit and what the employees in the Champlain/Rouses Point unit were being told by the Union. Although there were two meetings held that day, one for each of two shifts, St. Andrew chose to attend the one held at 7 p.m. even though it was held during his 4 p.m. to midnight evening shift. Thus, it is of interest to note that St. Andrew presumably was given time off from work to attend this meeting. Whether or not he was paid for the time he attended is not clear from the record.

At 6:55 p.m., on May 7, Cavo drove into the VFW parking lot in Champlain where the fourth union organizational meeting was to take place. St. Andrew pulled in behind him. While both were still in the parking lot, St. Andrew approached Cavo. Cavo described St. Andrew as appearing agitated. Gail Mesec, who later attended the meeting, credibly testified that as St. Andrew was getting out of his car, he was yelling and shouting that he had a list of things he wanted to bring up. He told Cavo that he (Cavo) might not want him (St. Andrew) at the meeting but that he had some questions for him and wanted some answers. Cavo told St. Andrew to go ahead and ask his questions but St. Andrew said that he would rather wait and ask them inside because he felt that everybody should hear the answers. Cavo replied that St. Andrew was more than welcome and both entered the building

When Cavo and St. Andrew arrived inside the building they found two Ammex employees who were eligible to vote. Wayne Veivia and Helena Dukat and two representatives of the Union, Randy Sorrell, a shop steward, and Gail Mesec, his guest. One other Ammex employee, Steve Cardan, may also have been present at the start of proceedings but more probably arrived later, mid-way through the meeting. He did not testify.

When St. Andrew walked into the room, according to Veivia, he immediately announced that he had a lot of questions to ask. He walked in, Veivia testified, with a chip on his shoulder. Sorrell testified that St. Andrew appeared upset when he came into the meeting. Mesec testified the same effect.

The meeting started normally with Cavo passing around an attendance sheet and calling the meeting to order. When the attendance sheet got to St. Andrew, he refused to sign it, as he had agreed to do and, in fact, did, at the two earlier meetings he had attended. On this occasion he stated to Cavo, "I don't need help from you or the Labor Board, so I don't have to sign that sheet." Although St. Andrew testified that he had come to the meeting undecided, with an open mind, ready fully to consider Cavo's answers to his questions, his

statement concerning not needing the Union nor the Labor Board, belies his declared open-mindedness.

The meeting then proceeded with St. Andrew asking a large number of questions from a paper which he held in his hand. Many of the questions concerned the Buffalo contract. a copy of which he also had in his possession. He directed his questions at Cavo and appeared upset as he did so, according to Sorrell. He asked about dues, health care benefits, strikes and the Buffalo agreement. According to Veivia, Cavo responded to all of St. Andrew's questions, some of which were the same as questions asked by others who were present. As St. Andrew asked questions on various topics and Cavo answered them, St. Andrew would point to his copy of the Buffalo contract, argue that what Cavo said was not what the contract said and would call him a liar. In particular. St. Andrew asked Cavo about the differences between the health insurance benefits described in the Buffalo labor agreement and those discussed by Cavo with the Champlain unit employees.

St. Andrew also asked Cavo about strikes and the strike layoff policy. Sometimes his questions were put in the form of, or were accompanied by, statements or accusations. According to the credited testimony of Sorrell, St. Andrew stated that if the Union was voted in, it would put him, and presumably the other unit employees, on strike. Both Cavo and Sorrell explained to St. Andrew that 99 percent of contracts are settled without a strike and that any strike would have to be authorized by two-thirds of the workers in the unit. Despite Sorrell's and Cavo's explanations, St. Andrew was not satisfied and continued to ask further questions about strikes. St. Andrew admitted, in his testimony, to becoming emotional and stated that he was angry and that the discussion between him and Cavo was heated. Sorrell supported St. Andrew on this point. Veivia, however, described Cavo as cool throughout the entire meeting. Mesec testified that although Cavo raised his voice, he did so just to he heard. Cavo admitted to being upset by being called a liar but more so by St. Andrew's refusing to listen to anything he was telling him. When St. Andrew asked about the strike layoff policy, Cavo tried to explain the strike fund but St. Andrew, according to Mesec, did not want to listen. Cavo testified that St. Andrew did not seem to want to listen to anything he said and appeared to have made up his mind before he arrived at the meeting.

St. Andrew also asked about the amount of money that would be deducted weekly or monthly from his paycheck, whether it was \$6 or \$30 per week or \$100 per month. Cavo tried to answer St. Andrew's questions but St. Andrew would not listen. Cavo advised St. Andrew to look at the check stub which Sorrell had brought with him and which he was passing around for everyone to see, but St. Andrew refused to do so, explaining that he did not care what Sorrell had taken out of his check each month for union dues because he did not work for Ammex and St. Andrew wanted to know what Ammex employees would have taken out of their checks. He said that after the union dues and other deductions were taken out, the employees would be no better off with the Union's health care plan than they were already getting from Ammex. He summed up his position, according to Sorrell, by stating that it would be outrageously expensive for him to join the Union.

²Although the complaint alleges that the one and only incident violative of Sec. 8(b)(1)(A) occurred on May 15, evidence discussed at length, infra, indicates that the incident upon which the complaint is founded occurred on May 7 or thereabouts. The fact that all of the testimony concerning the incident in question refers to May 15 is due to the fact that date was supplied by the attorneys doing the questioning and no witnesses bothered to correct the error contained within the wording of the question.

Finally, there was some discussion about job security and terminations. Specifically, St. Andrew asked what the Union would do for him if he were terminated by the Employer while another employee with less seniority was retained. He was advised that the Union would support any employee under those circumstances as long as the termination was not a "criminal release."

It was probably in connection with the subject of terminations that the name of Barbara La Valley, St. Andrew's mother-in-law, came up during the meeting. According to Cavo, St. Andrew made the statement that Cavo had better stop spreading lies about how he, St. Andrew, had gotten his mother-in-law fired. As noted, supra, La Valley had been a supervisor with Ammex, who somehow had gotten involved with St. Andrew's union activity early in the campaign and had been fired. The record does not specify whether or not a charge had been filed with regard to La Valley's termination but St. Andrew's remark early during the meeting concerning his not needing the NLRB indicates that perhaps there may have been.

At any rate, Cavo testified that he replied to St. Andrew's accusation of lying by telling him that he was an ignorant person if he believed that the Employer did not know that he, St. Andrew, had initiated the union campaign with his mother-in-law's assistance. He then told St. Andrew that the Employer knew everything. Cavo then said that because of the way St. Andrew's mother-in-law was fired, he should know that if the Union were voted out, the Employer would fire him the same way. According to Cavo, he then commented that he would be the first person in line at the Labor Board to help St. Andrew get his job back.

St. Andrew replied that he did not need Cavo's help, he did not need the Labor Board's help, and he was just looking out for himself. Despite St. Andrew's rejection of Cavo's offer of assistance in case of his termination and all that had gone on at the meeting up to this point, Cavo offered his hand stating that he was St. Andrew's friend and would help him any way he needed help. St. Andrew replied that he did not want to shake Cavo's hand, that he was not Cavo's friend and did not want to be Cavo's friend. St. Andrew admitted to being upset and emotional at this point and got up to leave.

According to the credited testimony of Cavo, as St. Andrew headed toward the door, he turned to Cavo and said, "You better quit spreading rumors and telling how I was bought out or you'll see what will happen to you." Cavo questioned, "Are you threatening me?" St. Andrew replied, "Take it any way you want . . . [y]ou just keep it up and you'll see what will happen to you." St. Andrew denied threatening Cavo in the exact words quoted but did admit to telling Cavo that he could take it any way he wanted. Sorrell testified in support of this testimony.

As St. Andrew went out through the door and into the parking lot he shouted back toward the door where Cavo was standing, "Stop spreading lies, stay away from my family, do not contact me in any way shape or form . . . [i]f you don't stop sending me junk mail, I'll do something about it." Cavo was trying to get St. Andrew to return to the meeting and kept telling him that it did not matter what was then being said, that if the Union got in, he would always be behind him and anyone else that was trying to get the Union in. Nevertheless, St. Andrew left. The meeting which had

gone on for about an hour, ended 10 minutes later. Almost the entire hour had been taken up with the Cavo/St. Andrew debate.

St. Andrew's testimony concerning his discussion with Cavo about Barbara La Valley's termination is markedly different from that of Cavo. St. Andrew denied that he blamed the Union for La Valley's termination and testified that it was Cavo who just came right out and said that St. Andrew was the reason she was fired. St. Andrew testified that he was upset when Cavo blamed him for La Valley's termination and denied responsibility.

St. Andrew also testified that during the discussion about the termination of La Valley, he was told that he was a fool and an idiot and had been bought by the company. According to St. Andrew, Cavo then added in this context that "if the Union got voted in, we'd see if I'd be working for the Company anymore." Then, "On second thought, maybe we'll let you work for us." When St. Andrew asked Cavo if he was threatening him, Cavo replied that he could take it as he wanted to.

Cavo denied making the statement attributed to him by St. Andrew which is quoted immediately above. Moreover, he testified that he did not threaten St. Andrew at all, in any way.

Other witnesses testified concerning this portion of the discussion. Veivia testified that there was a reference to St. Andrew's mother-in-law and to her trying to help St. Andrew get the Union in, but that he could not recall what Cavo said about it, if anything. Veivia denied that Cavo threatened St. Andrew.

Sorrell testified that La Valley's name was brought up during the discussion as was her termination. He could not recall who first brought up the subject but did recall Cavo telling St. Andrew, after first discussing La Valley's termination, that if the Union were voted out, St. Andrew would be one of the next ones fired, just like his mother-in-law, Barbara La Valley. Sorrell also recalled Cavo adding, "and, I'll laugh. But then again, maybe I'll be the nice guy to help you get your job back." Finally, Sorrell recalled St. Andrew stating that he did not want or need Cavo's help. With regard to the allegation that Cavo threatened St. Andrew, Sorrell explicitly denied that it had occurred. Mesec also testified that at no time during the meeting did Cavo threaten St. Andrew in any way. Explicating further, Mesec specifically denied that Cavo threatened St. Andrew with the loss of his job. Mesec like Sorrell and Veivia were present throughout the entire meeting.

The day after the meeting, May 8, St. Andrew went in to see Phil Belcher, and gave him his version of what had occurred the day before at the meeting. He reported that Cavo had threatened him and repeated the alleged threat. He also told Belcher that Cavo had accused him of getting his mother-in-law fired. He asked Belcher to help him. Belcher told St. Andrew that he would contact some people, and check and find out what he could do. Belcher obtained the telephone number of the NLRB and gave it to St. Andrew.

The conversation between St. Andrew and Belcher took place in the break room at the store in the presence of Jim

³This is the only remark specifically alleged as violative of the Act.

Lewis, another employee. Of the three, only St. Andrew testified.

According to St. Andrew, after discussing the alleged threat with Belcher, he told another unit employee, John Martin about it. This conversation, St. Andrew testified, occurred at his place of employment, later, the same day, after he discussed the alleged threat with Belcher. Martin did not testify.

The same day that Belcher gave St. Andrew the telephone number of the NLRB, May 8, or the following day at the latest, St. Andrew called the Board's office and spoke to one of its agents. He described to the agent, Cavo's alleged threat. The agent apparently typed up the charge from what he was told by St. Andrew during this phone call. This appears most likely⁴ because the language contained in the body of the charge is standard NLRB boilerplate typically used by Board personnel when preparing charges or similar documents and unfamiliar to most laymen.

Also contained in the body of the charge is the date of the alleged threat, May 7, 1996. Since St. Andrew's phone call to the Board office was made on May 8 or 9 and the charge concerns a May 7 incident, the May 15 date appearing in the complaint and referred to by all parties throughout the hearing as the date of the meeting during which the alleged threat occurred, is clearly in error.⁵

St. Andrew received the charge containing the May 7 date in it on May 11, according to his affidavit dated July 18. This affidavit also states that St. Andrew sent the charge back to the NLRB on May 12. Although it is very likely true that St. Andrew received the charge form from the Board on May 11 and his signature on the charge is dated May 12, it is obvious that he did not send the charge back to the Board office on May 12 because the document is stamped as having been received at the Board office on June 17 and filed the same day.

Along with serving as further proof that the date of the alleged threat was May 7 rather May 15, these dates and the information to which they refer clearly calls into question the general reliability of St. Andrew's memory. The charge, which had been prepared on or about May 8, it is evident, was not mailed back to the Board on May 12, the date it was signed, as claimed by St. Andrew. St. Andrew surely would have sent the charge back to the Board on May 12 when he signed it if the alleged threat were of any concern to him, but it was not. Rather it was obviously salted away for possible future use, depending on the outcome of the representation election scheduled for June 4.

B. Conclusion

The principal question to be answered in this case is one of credibility, i.e., did Cavo make the statement attributed to him by St. Andrew. I find that he did not. I credit Cavo's denial, as supported in full or in part by the three witnesses called by the Union, over the unsubstantiated allegation of the Charging Party.

This decision, however, is not founded solely on the weight of the testimony of four credible witnesses. There are questions of logical probabilities which support the Union's case as well as demonstrated inconsistencies which detract from that of the General Counsel.

Thus, the union organizational meeting, itself, was scheduled for the purpose of convincing attendees that it would be beneficial for them to join the Union and to vote for the Union in the upcoming representation election. Directing threats toward potential members would hardly accomplish this purpose.

The incident in the parking lot which occurred just prior to the opening of the meeting, with St. Andrew yelling and shouting clearly indicates that he was not there solely to listen to the Union's presentation. Indeed, when he told Cavo that he had some questions and Cavo told him to go ahead and ask them, St. Andrews refused, stating that he wanted everybody to hear the answers. This indicates that he was not so much interested in obtaining answers as he was interested in presenting his own contrary views to the other employees present. When Cavo invited St. Andrew into the meeting, already knowing that he had turned against the Union, he did so, I find, to try to win him back which, of course, would not best be achieved by threatening him.

The fact that St. Andrew entered the meeting room upset and with a chip on his shoulder, as witnesses testified, adds absolutely no credence to his statement that he had come to the meeting undecided, with an open mind ready fully to consider Cavo's answers to his questions. Then, when he refused to sign the attendance sheet stating, "I don't need help from you or the Labor Board," his assertion of open-mindedness reveals St. Andrew as transparently disingenuous.

St. Andrew's behavior throughout the meeting reflected anything but an individual honestly attempting to seek information. The testimony of the witnesses, described above with great particularity, in order to reflect both the language of the participants and the mood of the meeting, clearly indicates that St. Andrew arrived with his mind already made up, that he refused to listen to any explanations, rejected Cavo's answers to his questions, called him a liar and refused to shake his hand. St. Andrew was present, quite obviously, to present his own position and that of the Employer which is perfectly legitimate. But, by spending virtually the whole hourlong union meeting refusing to listen to explanations and calling the union representative a liar and then claiming that he was not there to be confrontational is not credible. Weeks before this meeting, St. Andrew had made it clear that he wanted nothing to do with the Union, that he wanted no contact with it whatsoever, then suddenly he shows up at the May 7 meeting with a copy of the Buffalo contract supplied by the Employer and an exhaustive list of questions prepared to debate on all of the subjects on his list. Indeed, contrary to his testimony, St. Andrew was present at the meeting for no other purpose than to present his own position and, coincidentally or not, that of the Employer, confrontationally or otherwise. His actions at the meeting belie his stated motives and call his credibility further into question.

The particularity with which the statements made at the meeting are cited, some alleged and denied, others admitted, is intentional. The similarity between the unlawful statement alleged and the statement admitted to have been said, is ap-

⁴A less likely possibility is that it was prepared by a labor lawyer or other professional familiar with Board language.

⁵ When specifically examined as to his certainty regarding the date of the alleged threat, St. Andrew could only testify that he was "pretty sure it was the 15th."

parent as is the clear possibility of misunderstanding under the excitedly confused circumstances.

Subsequent to the May 7 meeting, other incidents occurred which call into question the reliability of St. Andrew's memory. These include his error in testifying that the meeting at which the threat was made was on May 15. Although dates given during testimony, from memory, are frequently wrong and the error is not usually considered dispositive of the issue, in the instant case there was no reason to rely on memory. The date of the alleged threat appears right in the body of the charge, typed on May 8 and signed on May 12. With this evidence as to the date of the meeting available, why did St. Andrew state in his July 18 affidavit that the meeting occurred on May 15? Why did he testify to this, as fact, during the hearing? Why were these discrepancies not resolved on the record at the hearing? Whatever the answers are to these questions, one thing is certain: St. Andrew's memory is not at all reliable.

Finally, St. Andrew's testimony that he sent the charge back to the Board office on May 12 is untrue since it was not received and filed until June 17. Thus, St. Andrew's memory is clearly unreliable with respect to this event as well.

For these reasons, I have chosen to credit Cavo's well-corroborated testimony over that of St. Andrew and recommend that the allegation of violation of Section 8(b)(1)(A) be dismissed and that the objection based on the same set of facts be overruled.

CONCLUSIONS OF LAW

- 1. Ammex Tax and Duty Free Shops, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. United Food and Commercial Workers, District Union Local One, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.
- 3. The Union did not commit the violations of the Act alleged in the complaint.
- 4. The Employer's objection, which is coextensive with the unfair labor practice alleged in the complaint, is without merit and must be overruled.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The complaint is dismissed in its entirety.

IT IS FURTHER ORDERED that the objection filed in Case 3–RC–10410 be overruled and that the Regional Director for Region 3 issue a certification of representative.

⁶If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.